

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

MAR -9 2010

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2009-0130
	)	DEPARTMENT A
Appellee,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
MICHAEL RAY LYNAM,	)	the Supreme Court
	)	
Appellant.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. CR-200800661

Honorable Wallace R. Hoggatt, Judge

AFFIRMED

Joel A. Larson, Cochise County Legal Defender  
By Joel A. Larson

Bisbee  
Attorney for Appellant

H O W A R D, Chief Judge.

¶1 Appellant Michael Lynam was charged by indictment with transportation of methamphetamine for sale, six counts of possession of a deadly weapon while committing a felony drug offense, three counts of possession of drug paraphernalia, and possession of less than two pounds of marijuana. After a jury trial, he was convicted of

all charges except two counts of possessing a deadly weapon while committing a felony drug offense. The trial court sentenced Lynam to a combination of concurrent and consecutive, presumptive terms of imprisonment. Counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), avowing he has found no arguable issues to raise on appeal but requesting that we review the record for reversible error. Lynam has not filed a supplemental brief.

¶2 In reviewing the record, we note that the parties calculated Lynam's maximum prison exposure based on the presumptive term for each count and the possibility of consecutive prison terms because the state had not alleged any aggravating circumstances. See A.R.S. §§ 13-702(D), 13-709.03(A);<sup>1</sup> but see *State v. Aleman*, 210 Ariz. 232, ¶ 23 & n.7, 109 P.3d 571, 578 & n.7 (App. 2005) (state not required to allege aggravating circumstances in indictment). In determining a defendant's exposure for purposes of article II, § 23 of the Arizona Constitution and A.R.S. § 21-102(A), the court must consider the maximum term authorized by law for each offense. See *State v. Kuck*, 212 Ariz. 232, ¶ 9, 129 P.3d 954, 955 (App. 2006). But, once an eight person jury was empanelled, the maximum sentence to which Lynam was exposed was twenty-nine years.

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<sup>1</sup>The Arizona criminal sentencing code has been renumbered, effective "from and after December 31, 2008." See 2008 Ariz. Sess. Laws, ch. 301, §§ 1-120. For ease of reference and because the renumbering included no relevant substantive changes, see *id.* § 119, we refer in this decision to the current section numbers, rather than those in effect at the time of Lynam's offenses.

*State v. Soliz*, 223 Ariz. 116, ¶ 16, 219 P.3d 1045 (2009). The sentences imposed totaling 12.5 years were legal and, accordingly, there was no reversible error here.

¶3 We have reviewed the record and find ample evidence establishing the elements of the offenses of which Lynam was convicted. The state’s evidence included the testimony of the Benson police officer who had stopped Lynam in the very early morning hours on the date in question because his vehicle had a “nonoperable” light on its license plate. The officer took Lynam into custody because he had been driving while his license was suspended. After searching Lynam incident to that arrest, the officer found what was later identified as methamphetamine and marijuana in a container that had been in Lynam’s right rear pocket and \$737 in cash. The officer saw various guns in the cab of the truck, including a revolver, three semi-automatic handguns, an assault rifle and a .16 gauge shotgun. The officer found more methamphetamine in a container behind the driver’s seat. Another police officer testified that he had searched the truck pursuant to a search warrant. He described the methamphetamine, marijuana, guns and paraphernalia that he had found and seized, providing the foundation for admitting these items as exhibits at trial.

¶4 We have also reviewed the record relating to the sentences imposed. The presumptive prison terms were as prescribed by the applicable statutes. We find no reversible error with respect to sentencing.

¶5 Having searched the record for reversible error as requested by counsel and pursuant to our obligation under *Anders*, and having found none, we affirm the convictions and the sentences imposed.

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Joseph W. Howard  
JOSEPH W. HOWARD, Chief Judge

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Presiding Judge